



COURT MARTIAL

Citation: *R v April*, 2012 CM 1020

Date: 20121130

Docket: 201256

Standing Court Martial

Valcartier Garrison
Courcellette, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Warrant Officer J.D. April, Offender

Before: Colonel M. Dutil, C.M.J.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Orally)

[1] Warrant Officer April has admitted his guilt on two counts: first, the offence of drunkenness, under section 97 of the *National Defence Act*; and, second, the offence of assaulting a peace officer in the exercise of his duty, contrary to paragraph 270(1)(a) of the *Criminal Code*, punishable under section 130 of the *National Defence Act*.

[2] The circumstances of the case are as follows. Shortly before midnight on November 16, 2001, while he was posted to the Land Force Western Area Training Centre in Wainwright, Alberta, Warrant Officer April was a passenger in a civilian sport utility vehicle (SUV) driven by his spouse, who was driving erratically at a low speed on the base. A Military Police officer asked the driver of the vehicle to stop. After speaking with the driver and determining that she showed signs of being impaired, said police officer asked her to submit to a breathalyser test. While the police officer was in his vehicle, Warrant Officer April got out of his own vehicle and approached him. The police officer did the same and told him several times to go back to the SUV. Upset,

Officer April asked him what was going on and told him that he was a warrant officer and an unarmed combat instructor at the Training Centre. The prosecution suggests that Warrant Officer April thus tried to intimidate the police officer, but the Court cannot agree with this inference on the basis of these words alone, which were limited to giving his rank and function. The Military Police officer therefore informed Warrant Officer April that his spouse would have to submit to a breathalyser test and again told him to go back to the SUV. Warrant Officer April complied with the police officer's request. The driver of the vehicle then exited it to smoke a cigarette. The police officer asked her to go back inside the SUV, or else she would be placed under arrest. She became belligerent and refused to obey said police officer's instructions. Warrant Officer April, who was speaking on a cellular telephone at the time, heard the frightened screams of his spouse, exited the police station where he had gone and approached the same police officer and his spouse to find out what was going on and to try to calm her down. The Military Police officer asked him to stay back. With the situation becoming tense, the police officer took out his pepper spray and again told him to go back inside the SUV. Despite these warnings, Warrant Officer April continued to approach the police officer. Obviously, the situation seemed to be getting out of hand. Another Military Police officer, Corporal Kampa-Brousseau, arrived on the scene. He, too, asked Warrant Officer April several times to stay back. Warrant Officer April grabbed Corporal Kampa-Brousseau's left shoulder with his right hand, while the police officer tried to guide him away toward the back of the police vehicle. These are the acts allegedly committed by the accused. At the same time, a constable of the Royal Canadian Mounted Police arrived on the scene. The constable approached Warrant Officer April, who was still holding Corporal Kampa-Brousseau's shoulder. The police officers asked Warrant Officer April several times to let go and back off immediately. They added that his actions constituted assaulting a peace officer. Finally, Warrant Officer April let go, but he invaded Corporal Kampa-Brousseau's personal space several times, obliging Corporal Kampa-Brousseau to back up to preserve his space. Warrant Officer April was agitated at this moment and asked what was going on with his spouse. It turns out that she was refusing to comply with the police officers' instructions, behaving violently and resisting arrest. The police officers had to pin her to the ground.

[3] Since Warrant Officer April was not complying immediately with the police officers' requests, the constable from the Royal Canadian Mounted Police told him to do as he said immediately or he would use his conducted energy device, commonly called a "Taser," on him. Warrant Officer April then gave him what he perceived as a threatening look. The constable said to him, "I'm not fucking around." Warrant Officer April immediately became co-operative. At one point, Warrant Officer April said to Corporal Kampa-Brousseau, "I was in war while you were in fucking school" and "Get to me on the mat, you and I on the mat buddy, I will get you." During the events, Warrant Officer April showed signs of being intoxicated, and he was arrested for drunkenness.

[4] Once inside the police station, but before Warrant Officer April was put in a cell, his handcuffs were removed. Warrant Officer April refused to put his hands on his

head. Warrant Officer April started clenching his fists, breathing heavily. The video of the incident appears to show that Warrant Officer April was very uncomfortable on his knees. This is also what Warrant Officer April submitted when he testified before the Court at the sentencing hearing. The video reveals that Warrant Officer April seemed to be furious with the conduct of the police officers. It is at this point that a person wearing civilian clothes appears in the video. This person is Master Corporal Larente, responding to an urgent call to report to the police station. He tried to calm down Warrant Officer April by talking to him for several minutes. His efforts were successful, and Warrant Officer April finally got into the cell. Corporal Kampa-Brousseau was not injured, nor did he miss work after that evening's events. It is not possible to make a precise assessment of Warrant Officer April's state of intoxication at the time of the offences, but they do show that although he was not extremely drunk, he was clearly not in control of his emotions.

[5] Apart from the usual administrative documents, notably Warrant Officer April's service and pay records, his conduct sheet and the statement of circumstances for the offences, the documentary and pictorial evidence is complemented by two video recordings showing a portion of the events that take place the evening of November 16, 2011; a receipt from a Boston Pizza restaurant, dated November 16, 2011; and a SISIP/RARM form reporting the offender's monthly income and expenses. Warrant Officer April also testified.

[6] In imposing an appropriate sentence on an accused for the wrongful acts that he or she has committed in relation to the offences of which he or she is guilty, certain objectives must be aimed for in light of the principles applicable to sentencing, which vary slightly from one case to the next. The fundamental purpose of sentencing in a court martial is to maintain military discipline and build respect for the law by imposing fair sanctions having one or more of the following objectives:

- a) to denounce unlawful conduct;
- b) to deter the offender and other persons from committing offences;
- c) to separate offenders from society where necessary;
- d) to assist in rehabilitating offenders to return to their environment in the Canadian Forces or civilian life; and
- e) to promote a sense of responsibility in military members who are offenders.

[7] The sentence must also take into consideration the following principles. It must be proportionate to the gravity of the offence, the previous character of the offender and his or her degree of responsibility. The sentence should also take into consideration the principle of parity in sentencing, that is, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

Before considering depriving an offender of liberty, the Court has a duty to consider whether less restrictive sanctions may be appropriate in the circumstances. Last, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender and to account for any indirect consequence of the verdict or the sentence on the offender.

[8] The Court agrees with the counsel in attendance that the sentence should focus primarily on the objective of general deterrence and denunciation, but not to the extent that it prevents or unduly interferes with the rehabilitation of Warrant Officer April, who in the circumstances not only showed a serious lack of judgment, but also allowed himself to be carried away beyond the acceptable limits for a member of his rank and long experience. The prosecution suggests a sentence consisting of a reprimand and a fine of \$3,500. The defence submits that a simple reprimand is sufficient to satisfy the applicable sentencing principles and objectives. In the alternative, counsel for Warrant Officer April suggests that should the Court find it necessary to impose a fine in the circumstances, the payment of said fine should be divided into monthly instalments not exceeding \$100 a month.

[9] In this case, the Court considers the following circumstances to be aggravating:

- a) The objective seriousness of these offences. Assaulting a peace officer is punishable by a maximum of five years' imprisonment, whereas a person convicted of drunkenness is subject to a maximum sentence of 90 days for a non-commissioned member who is not on duty or who has not been warned for duty;
- b) The fact that Warrant Officer April persisted in his behaviour and lost control of his emotions. Given his experience and rank, it behoved him to restrain himself accordingly and, if need be, to make a complaint later to the appropriate authorities if he thought that his spouse was being treated unfairly by the police officers. His behaviour only added fuel to the fire and increased the tension between the persons concerned. This is a flagrant lack of judgment for a person of such great experience and military accomplishments, as evidenced by the numerous operational missions in Afghanistan, Bosnia, Haiti and East Timor. Without a doubt, Warrant Officer April totally lost control of his emotions, but in such situations it is sometimes difficult to determine whether or not a person really means what he or she says. Here, I will give the offender the benefit of the doubt; and
- c) The fact that it might not be his first brush with the law for offences involving alcohol.

[10] The Court considers the following factors to have a mitigating effect on the sentence:

- a) Warrant Officer April's admissions of guilt. In light of the circumstances of the case, the Court finds that these admissions are sincere and that Warrant Officer April accepts full responsibility for his actions with regard to police officer Kampa-Brousseau in this case and that his reprehensible conduct was due—at least in part and to a minor degree, according to the body of evidence, including the video evidence before the Court—to alcohol. Counsel for the defence submitted to the Court that the two offences for which Warrant Officer April has admitted his guilt were technical in nature or were at the least serious end of the spectrum for such offences. Counsel is not wrong, but the Court would add that the video from the patrol car of the Royal Canadian Mounted Police constable shows that the conduct of the Military Police officer, who pointed his finger at the offender while forcing him to back up and obey his instructions, contributed to increasing the exasperation of Warrant Officer April, who wanted to help his spouse, who he thought was being threatened. The images do not lead to the conclusion that the police officers were in any way in the wrong, but they do show that the situation was escalated and that Warrant Officer April snapped because he thought his spouse was in danger;
- b) The accused's service record is also a mitigating factor. Warrant Officer April has served his country for 24 years and has never had a disciplinary record. His two previous convictions by civilian courts, dating back to 2001 and 2008, are for driving a motor vehicle while impaired by alcohol. He was deployed several times overseas to war zones or for peacekeeping. He is highly qualified, as evidenced by his list of professional qualifications. His military career is enviable, and he has good reason to be very proud of it. The case law submitted by the prosecution is relevant, but the facts alleged against Warrant Officer April are less serious, and the service records of the offenders concerned are not comparable to the service record of Warrant Officer April;
- c) The personal situation of Warrant Officer April. Warrant Officer April is 47 years old. He has been suffering from post-traumatic stress disorder for a few years. This causes him to be irritable, anxious and hypervigilant. The medication he takes allows him to minimize these behaviours. He was not on medication at the time of the offences of which he admits he is guilty, as he thought that everything was under control, which was clearly not the case. He also testified about the professional and family problems surrounding his posting to Wainwright. He had to live far away from his child from a previous marriage, while his new spouse had trouble adapting to this new environment, being unable to find employment, mainly because of language problems. A year later, he was transferred to Joint Personnel

Support Unit Detachment Valcartier. He is subject to a career review and will probably be released within 18 to 36 months from now; and

- d) Finally, Warrant Officer April's family and financial situation Warrant Officer April has been married since June 20, 2011. This is a blended family. He has two children, including one over which he has shared custody. His spouse has a stable, average-paying job. He filed in evidence a form reporting his income and expenses. According to this information, his expenses exceed his income by a few hundred dollars a month. However, the information he provided regarding his entertainment and transportation expense, particularly the car loan payments for a 2012 Ram 1500, show that he has the necessary flexibility to cut back on certain consumer expenditures. A close look at his expenses shows that he could easily cut back on them and immediately turn a negative balance into a positive one. This is a personal choice over which the Court has no control but which would not prevent the Court from imposing a fine required to comply with the fundamental principles and objectives of sentencing.

[11] The Court does not agree with the defence's arguments to the effect that a reprimand alone would be the minimum sentence in the circumstances. Despite Warrant Officer April's mitigating circumstances, it is important for individuals of his rank and experience to control their emotions and act professionally at all times, especially when they are on a defence establishment. A reprimand with a fine of \$1,200 is sufficient to send a clear message to this effect.

FOR THESE REASONS, THE COURT

[12] **FINDS** Warrant Officer April guilty on the first count, namely, drunkenness under section 97 of the *National Defence Act*, and finds him guilty on the third count, namely, the offence of assaulting a peace officer in the exercise of his duty, contrary to paragraph 270(1)(a) of the *Criminal Code*, punishable under section 130 of the *National Defence Act*.

AND

[13] **SENTENCES** the offender, Warrant Officer April, to a reprimand and a fine of \$1,200, payable in 12 consecutive equal monthly instalments of \$100, starting January 15, 2013.

Counsel:

Major A.-C. Samson, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major L. Boutin, Defence Counsel Services
Counsel for Warrant Officer J.D. April